

ResearchOnline@JCU

This is the **Accepted Version** of a paper published in the
journal *Alternative Law Journal*:

Galloway, Kathrine (2012) *Thinking Like a Lawyer*. *Alternative Law Journal*, 37
(4). p. 298.

Thinking like a lawyer

In discussions leading up to the publication recently of the discipline standards for law, there was naturally a focus on thinking skills. Indeed many law students and practitioners would be familiar with the mantra of 'thinking like a lawyer'. Some claim that 'thinking like a lawyer' is a nebulous concept, others that it is a 'self-aggrandising sham ... to justify the existence of a ... special lawyer class'.

Whether or not one accepts that there is a particular mode of thought or reasoning or analysis that belongs to lawyers in particular, there is growing evidence to show that the way we teach lawyers and the way that law is practised is in fact linked to psychological distress.

Lawyers at work

Questioning, arguing, analysing has always come naturally to me, and these modes of thought have certainly been useful in my work as a lawyer. Imagine my surprise when I worked alongside social workers in the community legal sector, experiencing a completely new way of doing things. This was my first insight into the peculiarity of my thinking processes, and the extent to which I had internalised a legal way of thinking.

Not much is different in the law school. Legal academics, like lawyers, think and address problems in a particular way. This has caused some discussion in a cross-disciplinary environment, where the ways we (academic) lawyers think and behave have attracted comment. Observations about our 'peculiar' modes of thought include that we lawyers are argumentative, adversarial, questioning, rule-based and obsessed with detail. (Really? Yes, really.)

These comments are a useful prompt for reflection on the wider impact of these modes of thought and behavior. How do they affect our relationship with others?

Lawyers at home

I have shared my home life with a litigation lawyer for over 20 years. We are comfortable both talking law and talking legally. ('You have my undertaking to fix the shelves on the weekend.') Our approaches to relationships, life and parenting probably take a distinctively legal flavor, and this spills over into our family life. Our children refuse to be held to deals they do that are unsupported by consideration. Two of my children have made written submissions to their high schools, independent of each other, protesting the lack of procedural fairness in school council voting procedures. Nature or nurture?

Watching television inevitably involves discussion of the legal implications or deficits in argument from a legal perspective. Crime procedurals are almost impossible to endure: 'Give me a sample of your saliva for DNA testing. If you don't give it to me, I can just go and get a warrant. If you've done nothing wrong, you have nothing to fear.' I don't think I need to discuss the effect this has on a lawyerly sensibility...

I wonder though how this way of thinking affects lawyers' relationships with non-lawyers, particularly intimate relationships.

In addition to the way in which we use language and problem-solve in everyday life, there are other flow-on effects from our work. The first is that we are trained to be risk averse after studying the consequences of risk taking for four years then dealing with risk in practice. I've met many, many lawyers who will not wear new clothes without washing them, as a consequence of reading *Grant v Australian Knitting Mills* in first year law.

Second, for those of us who see the worst in human nature through criminal and family law practice, there is potentially associated emotional trauma. The negative impacts on these lawyers' personal lives are well documented.

Solutions

Since the landmark 'Courting the Blues' report in 2009, there has been a lot of work in the academy and the profession to develop and implement strategies to transform the way we think about lawyering and legal education. I see this as a multi-layered and contemporaneous transformative process.

We need to develop the capacity in our students for resilience and reflective practice. At the same time, we need to promote cultural change in the profession to accept diversity and more collaborative modes of practice and working arrangements. The lynchpin in this is the legal academy. It is our job to undertake the research to support such change in the profession and in legal education, and to educate the lawyers of the future in a way that will facilitate emotional literacy and self-management strategies to minimise the down-side of thinking like a lawyer.

KATE GALLOWAY is an escapee from 16 years of private practice, currently thinking like a lawyer in the School of Law at James Cook University. In this role, she is a keen observer of the effects of legal thinking, and legal education — in both traditional and more contemporary approaches — and how this relates to her own experiences and those of her lawyer friends and colleagues. She has co-convoked the Law Associate Deans (Teaching & Learning) Network since its inception in 2010, and is a member of the Wellness Network for Law.

© 2012 Kate Galloway